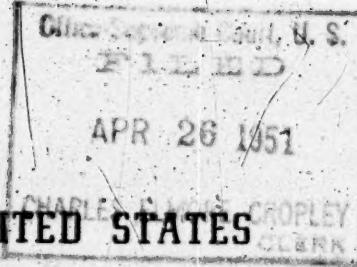


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 486

PANHANDLE EASTERN PIPE LINE COMPANY,
Appellant,

vs.

MICHIGAN PUBLIC SERVICE COMMISSION AND
MICHIGAN CONSOLIDATED GAS COMPANY,
Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE OF
MICHIGAN

SUPPLEMENTAL BRIEF FOR APPELLEE, MICHIGAN
CONSOLIDATED GAS COMPANY

DONALD R. RICHBERG,
CLIFTON G. DYER,
JAMES W. WILLIAMS,
Counsel for Appellee,
Michigan Consolidated Gas Company.



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Appellees

**SUPPLEMENTAL BRIEF FOR APPELLEE, MICHIGAN
CONSOLIDATED GAS COMPANY**

Subject to the Court's permission, appellee Michigan Consolidated Gas Company submits this brief in response to memorandum of the Federal Power Commission, filed amicus curiae shortly before the oral argument.

This appellee wishes to comment on the one question raised by the Federal Power Commission brief, Page 8, as follows:

“* * * if the Federal Commission determined, as provided for in Section 7(e) of the Natural Gas Act, that the public convenience and necessity require the transportation of gas in interstate commerce for direct sale to an industrial consumer, it would seem

that the state could not nullify such federal action through denial of a certificate for the sale."

We submit that in reaching this conclusion counsel for the Commission has overlooked the clear division of responsibility between the federal and state agencies contemplated by the Natural Gas Act. Eliminating the language concerning transportation the Natural Gas Act, Section I(b) reads as follows:

"The provisions of this Act shall apply to * * * the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to any other * * * sale of natural gas * * *"
(Italics ours.)

The same Section gives to the Federal Power Commission full jurisdiction over the transportation of natural gas in interstate commerce.

I

Claim of Appellant

In this connection appellant has consistently claimed that:

(a) Under above clause Federal Power Commission has no jurisdiction over a direct sale to a customer, and therefore no authority to prevent such a sale.

(b) The State, by reason of the Commerce Clause of the Constitution and the control exercised by Congress by virtue of the Natural Gas Act, has no authority to prevent such a sale.

In other words, Panhandle claims it may sell to direct customers where and when it pleases, irrespective of what the effects may be upon the regulatory processes, either state or federal.

II

Position of Federal Power Commission

The Federal Power Commission in its memorandum recognizes:

- (a) No such hiatus in the scheme of regulation was intended by Congress when it passed the Natural Gas Act.
- (b) Michigan is not attempting to require a certificate for the transportation, but for the right to sell.
- (c) Conflict may arise between jurisdiction asserted by the Federal Power Commission over transportation and jurisdiction asserted by the state over direct sales. If so, jurisdiction of the Federal Power Commission must prevail.

III

Position of Appellee

- (a) The respective Jurisdictions thus asserted are complementary, and in no sense conflicting.
- (b) It was clearly the intent of Congress that the Federal Power Commission have no jurisdiction over direct sales as such. (Provisions of Section 7(c) cannot be used to enlarge the limited jurisdiction conferred by Section 1(b). See *Panhandle v. FPC*, 337 U. S. 498, 507-9.)
- (c) It was also clearly the intent of Congress that matters of paramount national interest be under control of the Federal Power Commission and that matters of paramount local interest be governed by state regulation. Direct sales are obviously regarded as local under the language of Section 1(b).
- (d) Granting to the Federal Power Commission jurisdiction over transportation, gives to that Commission primarily the power to guard national interest (for

example allocation of supplies as between various areas and customers), and thereby determine if the gas needed for any particular direct sale could be transported without injury to other sections or areas or customers. Any action by the Federal Power Commission must necessarily presuppose that such a sale could legally be made within the state; otherwise there would be no occasion to ask for permission to transport or to build necessary extensions. The Federal Power Commission could not possibly find public convenience and necessity required the transportation of the gas, or the construction of the facilities if, when transported, the gas could not legally be sold.

(e) The only power which the Federal Power Commission has to order a pipeline company to render service is that prescribed in Section 7(a) of the Act. Under that section the Commission, subject to the conditions therein prescribed, may order a pipeline company to render service to "any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public." In other words it covers only sales for resale.

Conclusion

This appellee submits that under a proper interpretation of the provisions of the Natural Gas Act there can be no conflict between state and federal jurisdiction in that:

(a) If the state finds that local interest warrants the sale and the Federal Power Commission finds the national interest is adverse the order of the Federal Power Commission must stand and there can be no sale because no transportation is authorized.

(b) If the state finds that the local interest is adverse to such a sale there can be no basis for an application to the Federal Power Commission for a certificate to transport and there can be no proper finding of convenience and necessity for such transportation.

(c) Gas can be sold and transported for direct sales only if the transaction receives the concurrent approval of both the state and federal commission.

Is the Federal Power Commission's jurisdiction over transportation adequate under all circumstances to give the state the protection it needs in its regulatory processes? Can the Federal Power Commission deny to Panhandle the right to transport gas in interstate commerce for sale to direct customers, if Panhandle has excess gas for sale not required to meet the demands of any of its distributing customers? These and other questions of like nature indicate in our mind the need for adequate local control of direct sales.

Respectfully submitted,

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